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ORIGINAL

In the Matter of)
)
1983 Cable Royalty)
Distribution Proceeding)

Docket No. 84-1 83CD

ORDER

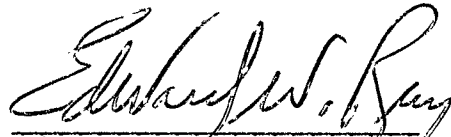
On November 12, 1985, the Joint Sports Claimants and the Program Suppliers filed discovery requests, and objections to NAB's rebuttal testimony of Dr. Abel. The underlying nature of the requests relates to uncertainty about the claims of Turner Broadcasting System (TBS). TBS is represented in Phase I by three different groups, the Program Suppliers, Joint Sports, and NAB, for different copyrighted material. Specifically, the question the discovery requests relates to is the status of wrestling programs on TBS.

The Tribunal orders NAB to provide by the close of the Program Suppliers rebuttal case, a list of the "weekly wrestling programs" referred to in paragraph 3 of NAB Ex. 29R for calendar year 1983 including (a) the program title; (b) the time period during which it was broadcast; and (c) the name of all entities and persons other than TBS who produced the program. The

Tribunal requests the Program Suppliers and the Joint Sports Claimants to make their own effort to ascertain this information from TBS. The Tribunal further orders the Program Suppliers, the Joint Sports Claimants and NAB to submit their understanding of the proper categorization of (1) wrestling, and (2) "minor sports" by the close of the Program Suppliers' rebuttal case. The Tribunal will render a final determination on Program Suppliers and Joint Sports request prior to the start of NAB's rebuttal case.

On November 12, 1985, the Devotional Claimants moved to strike Exhibits 37X, 38X, and 41R from PBS' rebuttal case, and to strike the "Statement of the Joint Sports Claimants Concerning Rebuttal." The Tribunal denies the motion of the Devotional Claimants against PBS. PBS, in its response to the motion, has limited the nature of Ms Wood's sponsorship of Exhibits 37X, and 38X, and as limited the sponsorship is adequate. In addition, the Tribunal considers designation of prior records on rebuttal a perfectly proper procedure. We note that our requirement of designation of prior records on May 13 was for the direct cases only, and we did not intend to foreclose a similar designation for the rebuttal cases.

The Tribunal grants the motion of the Devotional Claimants against the Joint Sports Claimants. We agree that it was inappropriate to argue the merits of the Joint Sports case in an unsolicited pleading.¹ Joint Sports' claim that its statement was in lieu of opening remarks in the rebuttal phase is not accurate. The Joint Sports statement was a recap of the direct case evidence. We expect that any opening remarks on rebuttal will be confined to the evidence a party intends to rebut, and not a summary of what a party believes has been established on direct.


Edward W. Ray
Acting Chairman

Dated November 15, 1985

¹All parties will have an opportunity in writing and orally at the close of the rebuttal phase to argue their cases.